

Message Text

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FM AMEMBASSY MOSCOW

TO SECSTATE WASHDC PRIORITY 1152

INFO AMCONSUL LENINGRAD

C O N F I D E N T I A L MOSCOW 11552

E.O. 11652: GDS

TAGS: (KUDIRKA, SIMAS)

SUBJECT: CONSULAR ACCESS TO KUDIRKA

REF: (A) STATE 161044, (B) MOSCOW 11512, (C) MOSCOW 11285

1. MORNING JULY 26 CONSOFFS CALLED ON M. CHERNIGOV AND G.F. POLYAKOV AT MFA CONSULAR ADMINISTRATION, PRESSING FOR ANSWER TO JULY 18 REQUEST FOR CONSULAR ACCESS TO KUDIRKA. CONSOFFS SAID THEY WERE ACTING UNDER SPECIFIC INSTRUCTIONS FROM WASHINGTON, AND PER PARA 3 REF A CITED PARAGRAPH 2 OF PROTOCOL AS INDICATION THAT "WITHOUT DELAY" IN PARAGRAPH 3 ARTICLE 12 OF CONSULAR CONVENTION MEANT TWO TO FOUR DAYS.

2. CHERNIGOV AND POLYAKOV WERE GENERALLY AMICABLE BUT VERY HARDLINE. THEY SAID EMBASSY'S REQUEST WAS UNDER REVIEW, BUT THE SOVIET GOVERNMENT WAS NOT READY TO ANSWER AND THEY HAD NO REASON TO BELIEVE ANY DEFINITIVE ANSWER WOULD BE FORTHCOMING IN NEAR FUTURE. EMBASSY'S REQUEST WAS COMPLICATED MATTER, AND ONE WHICH EMBASSY HAD NO RIGHT TO MAKE. KUDIRKA IS A SOVIET CITIZEN, BORN IN THE USSR OF SOVIET CITIZEN MOTHER, HAS ALWAYS LIVED IN THE USSR, AND IS NOW ON SOVIET TERRITORY. UNDER SOVIET LAW KUDIRKA IS A SOVIET CITIZEN ONLY. POLYAKOV ASSERTED THE SAME WAS TRUE OF HIS MOTHER. HE SAID IT WAS OFFENSIVE (OBIDNO) FOR CONSOFFS TO INSIST KUDIRKA, " A SOVIET CITIZEN BORN OF SOVIET MOTHER," COULD BE AN AMERICAN. (CONSOFFS DID NOT POINT OUT FACTS OF BALTIC

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HISTORY, FEELING SUCH REFERNCES WOULD HAVE BEEN COUNTER-

PRODUCTIVE TO ACCESS REQUEST.)

3. CHERNIGOV SAID THAT IN ANY SUCH CASE OF DUAL CITIZENSHIP IN WHICH THE INDIVIDUAL IS RESIDING IN ONE OF HIS COUNTRIES OF CITIZENSHIP, THAT COUNTRY'S CITIZENSHIP PREVAILS TO THE EXCLUSION OF THE OTHER CITIZENSHIP. KUDIRKA RESIDES ON SOVIET SOIL SO HIS SOVIET CITIZENSHIP PREVAILS TO THE EXCLUSION OF ANY ALLEGED AMERICAN CITIZENSHIP. POLYAKOV INSISTED THAT KUDIRKA'S SITUATION HAS NOTHING TO DO WITH THE CONSULAR CONVENTION, AND THE EMBASSY HAS NO RIGHT OF ACCESS TO HIM.

4. CONSOFFS ASSERTED THAT, WHILE SULSKIENE AND KUDIRKA ARE SOVIET CITIZENS UNDER SOVIET LAW, THEY ARE ALSO U.S. CITIZENS UNDER U.S. LAW, AND THE EMBASSY HAS THE RESPONSIBILITIES TO THEM AND THE RIGHT OF CONSULAR ACCESS TO KUDIRKA UNDER THE CONSULAR CONVENTION. CONSOFFS REITERATED THAT KUDIRKA DERIVED U.S. CITIZENSHIP THROUGH HIS U.S.-BORN MOTHER. THEY SAID THEY HOPED TO KEEP ACCESS REQUEST IN CONSULAR CHANNEL, BUT IF THEY WERE UNABLE TO OBTAIN REPLY IN NEAR FUTURE CASE WOULD BE RAISED TO A HIGHER LEVEL. CHERNIGOV AND POLYAKOV REACTED SHARPLY, AND ADMONISHED CONSOFFS NOT TO MAKE THREATS.

5. CHERNIGOV AND POLYAKOV SAID ONLY THAT THEY WOULD INFORM APPROPRIATE AUTHORITIES OF CONSOFFS' JULY 26 VISIT AND REQUEST.

6. CONSOFFS THEN ASKED TO BE INFORMED OF LEGAL GROUNDS OF KUDIRKA'S CONVICTION, NOTING THAT THEY AND DEPARTMENT HAD CONFLICTING INFORMATION. CHERNIGOV'S REPLY WAS NONCOMMITTAL.

7. COMMENT: AS AFTER LAST EXCHANGE WITH CHERNIGOV (REF C), WE DO NOT CONSIDER NEGATIVE REPLY FROM CONSULAR ADMINISTRATION AS NECESSARILY INDICATIVE OF SOVIET GOVERNMENT'S ULTIMATE RESPONSE TO OUR REQUEST FOR ACCESS. WE ARE CONFIDENT DECISION WILL COME FROM HIGHER LEVEL, AND WILL BE INFLUENCED BY POLITICAL CONSIDERATIONS.

8. ACTION REQUESTED: SUGGEST DEPARTMENT COMMENCE SUPPORTING DEMARCHES WITH SOVEMBASSY, PERHAPS BEGINNING WITH GALISHNIKOV O/A JULY 31. STOESSEL
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